STATE OF MICHIGAN

COURT OF APPEALS

KELLY KARPP and LINDA KARPP,

Plaintiffs-Appellees,

v

RANDALL G. LANSKI, LOIS M. LANSKI, LYNNETTE LANSKI, and JULIE DEWYSE,

Defendants-Appellants.

UNPUBLISHED
October 11, 2005

No. 255192
Alcona Circuit Court
LC No. 98-010063-CH

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Following a remand from this Court,[1] the trial court entered a judgment for plaintiffs on their suit to quiet title in land that was the subject of a boundary dispute between the parties. As part of that judgment, the trial court determined the location of an old fence line that the parties' predecessors in title acquiesced to as the boundary between the two plots of land. Defendants appeal as of right, challenging that determination.

The trial court found that the line of acquiescence, or the old fence line, began at the southern portion of the land at a railroad iron, a fact that was not disputed by either party. The trial court then found that the old fence went from that railroad iron, in a straight line, to a point approximately 27 feet east of where defendants had erected a new fence. Defendant argues that this finding was erroneous.

Actions to quiet title are equitable in nature and are reviewed de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001). However, a trial court's factual findings are reviewed for clear error. *Lamp v Reynolds*, 249 Mich App 591, 595; 645 NW2d 311 (2002). A finding is clearly erroneous when "the reviewing court on the entire record is left with

[1] In *Karpp v Lanski*, unpublished opinion per curiam of the Court of Appeals, issued 6/18/02 (Docket No. 230825), we reversed the trial court's determination that the doctrine of acquiescence did not apply to establish the old fence line as the boundary line between the parties' property. We remanded to the trial court "for further factual findings regarding the exact path of the old fence line." *Id*. at slip op p 3.

the definite and firm conviction that a mistake has been committed." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). We find that the trial court did not err in determining the line of acquiescence.

The facts presented at trial and during the taking of supplemental testimony support the trial court's determination. It was undisputed that there were remnants of the old fence in the southern, wooded portion of the property. Both of the parties' surveyors agreed that if the old fence line remnants were extended to Bamfield Road, the line would hit a point approximately thirty feet east of where defendants erected the new fence. Additionally, William Licht and Herbert Garrett, two people who actually saw where the fence was located when it was in good repair, believed that defendants' new fence followed approximately where the old fence was located and was only a few feet west of the old fence at the northern end. However, upon viewing a video taken a few years before, they both determined that they were mistaken. They revised their testimony and concluded that, in fact, the old fence had started at a post at the northern end of the land that was approximately thirty feet east of where the new fence was located. Additionally, both men testified that the old fence went in a straight line from that point by the road to the railroad iron at the southern end of the land. Therefore, we are not "left with the definite and firm conviction that a mistake has been committed." *Walters, supra*.

Plaintiffs' request for sanctions because of a frivolous or vexatious appeal is premature. See MCR 7.211(C)(8). Further, we do not feel sanctions are appropriate in this case. Although defendants' argument was ultimately unsuccessful, it was not without a reasonable basis. MCR 7.216(C).

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ William B. Murphy